

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JAMI PHIFER,)
)
 Plaintiff,)
)
 v.) Civ. No. 03-0327-SLR
)
 E.I. DU PONT DE NEMOURS AND)
 COMPANY,)
)
 Defendants.)

MEMORANDUM ORDER

At Wilmington this 7th day of June, 2004, having reviewed plaintiff's motion to alter or amend judgment pursuant to Fed. R. Civ. P. 59 and the papers submitted in connection therewith;

IT IS ORDERED that plaintiff's motion (D.I. 13) is denied for the reasons that follow:

1. On March 26, 2003, plaintiff Jami Phifer filed a complaint against defendant DuPont Country Club¹ alleging personal injuries from a fall she sustained on club grounds. (D.I. 1) On June 4, 2003, defendant filed a motion to dismiss the complaint for failure to state a claim upon which relief may be granted pursuant to Federal Rule of Civil Procedure 12(b)(6). (D.I. 7) On January 5, 2004, the court granted defendant's motion. (D.I. 12)

2. Under Fed. R. Civ. P. 59(e), "[a]ny motion to

¹On June 3, 2003, the parties filed a stipulation substituting E.I. Du Pont de Nemours and Company as the proper defendant in lieu of DuPont Country Club. (D.I. 6)

alter or amend a judgment shall be filed no later than [ten] days after entry of the judgment.” However, Rule 59(e) does not specify the circumstances under which such a motion is to be granted. The Third Circuit has recognized three grounds for amending judgment: (1) a change in the controlling law; (2) availability of new evidence; or (3) a need to correct a clear error of law or fact or to prevent manifest injustice. Max's Seafood Café by Lou-Ann, Inc. v. Quinteros, 176 F.3d 669, 677 (3d Cir. 1999).

3. Plaintiff argues that the court should amend its judgment on the basis of the third ground for her negligence claim against defendant. To this end, plaintiff argues that defendant knew or should have known that allowing a truck to unload while parked in the driveway outside the Dupont Country Club, adjacent to the doors of the main entrance and abutting the curb of the sidewalk, involved an unreasonable risk of harm to her as a business invitee. Plaintiff asserts that “reasonable and prudent people in our society commonly recognize the risk of harm which loading or unloading activity poses to unsuspecting pedestrians.” (D.I. 13 at 4)

4. Plaintiff's argument is unavailing. Plaintiff fails to show that the court erred either in the law or the facts in dismissing this case. Similarly, plaintiff has not presented

evidence to show that manifest injustice will result if the case is dismissed. In her complaint, plaintiff argued that a "loud noise" caused a man to bump into her and knock her off her feet. (See D.I. 1 at ¶¶ 16, 17, 19, 20) Plaintiff cannot say with positive assurance that the unloading truck emitted this noise; she merely infers this to be the case because the noise originated from the direction of the unloading truck. Even if the truck did cause the noise, moving activities, including loading and unloading trucks, are everyday events common to the human experience, as noted by plaintiff numerous times in her brief. Accordingly, the court cannot conclude that unloading a truck in the circular drive outside defendant's club, albeit in the vicinity of business invitees on the sidewalk, constituted an unreasonably dangerous condition.

5 Plaintiff also challenges the court's decision to dismiss her negligence claim on grounds that the unloading truck proximately caused her injuries. To this end, plaintiff contends that defendant's liability turns on whether the intervening act of the man bumping into her and knocking her off her feet was a normal and foreseeable consequence created by defendant's alleged negligence in allowing a truck to be unloaded in the vicinity of business invitees. Plaintiff premises this argument on case law. In particular, plaintiff cites Duphily v. Delaware Elec. Coop., 662 A.2d 821, 829 (Del. 1995), wherein the Delaware Supreme Court

held:

A superseding cause is a new and independent act, itself a proximate cause of an injury, which breaks the causal connection between the original tortious conduct and the injury. If the intervening negligence of a third party was reasonably foreseeable, the original tortfeasor is liable for his negligence because the causal connection between the original tortious act and the resulting injury remains unbroken.

Plaintiff asserts that the unknown man acted instinctively as a result of being startled by the loud noise stemming originated from the unloading truck. Plaintiff, therefore, claims that the unknown man's intervening act was a normal and foreseeable consequence of defendant's negligence in allowing the unloading of the truck. As such, plaintiff maintains that the unknown man's actions were not a superseding cause of her injuries, thereby exonerating defendant from liability.

4. The court finds this argument without merit.

Plaintiff has failed to show that the court made an error of law or fact in its original decision to dismiss the case or that manifest injustice will result if the dismissal stands. Assuming that defendant was an original tortfeasor,² a reasonable person in defendant's position could not have foreseen or anticipated that the loud noise would have caused a third party, either

²For purposes of this discussion only, the court accepts plaintiff's argument that defendant was negligence in allowing a truck to unload in the vicinity of the club entrance.

entering or exiting the club at the same time as plaintiff, to bump into plaintiff and knock her off her feet. Plaintiff's injury was simply an unfortunate mishap of timing. In other words, as the court previously explained, the unknown man's actions broke the chain of events beginning with the loud noise and ending with plaintiff's fall and became the sole proximate cause of plaintiff's injuries. Thus, besides being an intervening cause of plaintiff's injuries, the unknown man's actions also constituted a superseding cause, shielding defendant from liability. The court, consequently, denies plaintiff's motion to alter or amend judgment.

Sue L. Robinson
United States District Judge